IN THE MATTER OF LIM LIP SZE

HIGH COURT SABAH & SARAWAK, KUCHING
DATO' HJ. ABDUL KADIR BIN SULAIMAN J
[ORIGINATING MOTION NO. 25-01-95-1]
5 MAY 1995

LEGAL PROFESSION: *Computation of chambering period - Section 4(1A)(a) Sarawak Advocates Ordinance (Cap. 110) - Whether period spent reading in chambers before formal conferment of degree to be taken into consideration.*

The applicant, who graduated from Universiti Malaya, had soon after obtaining his examination result but before being formally conferred with a degree in law, (which was to be held on 12 August 1994), commenced reading in chambers on 3 May 1994. He applied to the Court for the period he had spent reading in chambers before the formal conferment of the degree to be taken into consideration for the purpose of calculating the twelve months period under s. 4(1A)(a) of the Ordinance. Counsel for the State Attorney General objected on the ground that a qualified person must be one conferred with the degree as stipulated by s. 4(1)(cc).

Held:
Section 4(1A)(a) of the Ordinance is silent as to when a person should commence to be a pupil or to read in chambers of a practising advocate of requisite experience for the purpose of calculating the necessary twelve months period. Though an independent provision, it is not the intention of the legislature to expect any person at all to commence pupillage or reading in chambers even before he embarks on his legal education or even after embarking on such education, but before he passes the examination in respect of such education. However, once the result of his examination is announced and he is successful in the examination but for the formal conferment of the degree, in the absence of an express provision in the Ordinance, he should not be penalised for having taken the initiative to be a pupil or to read in the chambers of a practising advocate of requisite experience for the purpose of acquiring the twelve months period required by s. 4(1A)(a) to support his application for admission as an advocate. That period should be counted as by that date he had attained his academic qualification in law.

[Application allowed]

Legislation referred to:
Sarawak Advocates Ordinance (Cap. 110), ss. 4(1A), (1A)(a), (1B)(a), (1)(cc)

For the applicant - H.C. Sim; M/s. Reddi & Co.
For the State Attorney-General - Lim Heng Choo, State Attorney-General Chambers, Kuching
For the Sarawak Advocates Association - Frank Tang

JUDGMENT

Hj. Abdul Kadir bin Sulaiman J:

The applicant is a law graduate from University of Malaya. According to Exhibit "A" to the affidavit in support of the applicant, affirmed on 4 January 1995, he passed the Bachelor of Law degree with 2nd Class Honours (Upper Division) on 20 April 1994. He was formally conferred with the degree only at the convocation held on 12 August 1994, a gap of slightly over 3 months. However, on 3 May 1994, soon after he obtained the result of the examination but before waiting for the conferment of the degree during the convocation, he commenced reading in chambers of Mr. Sim Hui Chuang of Messrs. Reddi & Co. Advocates, Kuching, a

qualified practitioner under s. 4(1A) of the Ordinance. He continued to do so until the date of the filing of this application which is on 4 January 1995. By this application he applies that the period he spent reading in chambers from 3 May 1994 to 12 August 1994 be reckoned as part of the period of chambering for purpose of s. 4(1A)(a) of the Sarawak Advocates Ordinance (Cap. 110) (hereinafter referred to as "the Ordinance"). However, if this cannot be so, he applies that he be granted exemption for this period or any other period as a special circumstance under s. 4(1B) of the Ordinance.

Mr. Lim Heng Choo for the State Attorney General objected on the reckoning on the ground that that period before the formal conferment of the degree cannot be counted for the purpose of s. 4(1A)(a) because the legislature clearly intended that a qualified person must be one conferred with the degree as stipulated by s. 4(1)(cc). Therefore, unless the degree is conferred, even though he had passed the examination earlier, he could not start his chambering until he is so qualified. If he does so, that period should be ignored. As to the alternative application for exemption, Mr. Lim says that there is no special circumstance shown as the applicant had not explained as to why it took the University that length of time after the passing of the examination to confer the degree upon him. Mr. Frank Tang for the Sarawak Advocates Association supports the contention of Mr. Lim that the applicant must be conferred the degree first before he is eligible to read in Chambers. To him the delay by the University to formally confer the degree upon the applicant is administrative in nature and should not be the concern of the Court when hearing this application. He goes further to say that if the applicant chose to do his chambering before he is qualified under s. 4(1)(cc) the issue of exemption under s. 4(1B)(a) would not arise at all. In other words, the applicant's earlier reading in chambers cannot be a special circumstance. In reply, Mr. Sim Hui Chuang for the applicant submitted that separate consideration should be given between the qualification required under s. 4(1)(cc) and that under s. 4(1A)(a) as they are distinct matters for consideration.

The issue, therefore, is whether the period the applicant spent reading in chambers after the passing of the examination but before the conferment of the degree of Bachelor of Laws by the University of Malaya, is a period to be taken into consideration for purpose of calculating the twelve months period under s. 4(1A)(a) of the Ordinance.

Section 5 of the Ordinance requires a person to apply to the Chief Justice in order to be admitted as an advocate under the Ordinance. He is to satisfy the Chief Justice that he is a qualified person to be so admitted. Various requirements are spelt out in the Ordinance as conditions precedent to be so qualified to be admitted. In the case of the applicant, first is the requirement of s. 4(1)(cc) that he has been conferred the degree of Bachelor of Laws by the University of Malaya. Secondly is the requirement of s. 4(1A)(a) that he has been a pupil or read in the chambers of an advocate who has been lawfully practising in Malaysia for a period of not less than 5 years immediately prior to the applicant becoming his pupil or commencing to read in his chambers for a period of not less than twelve months. However, if he does not have the 12 months qualification, the period may be shortened provided he had been exempted from the whole or part of the 12 months chambering period if there are special circumstances justifying the exemption. Thirdly, he must satisfy the Chief Justice of the conditions required by s. 4(2) of the Ordinance.

There is no quarrel as regard the first condition precedent because as on 12 August 1994 the applicant has been conferred with the degree of Bachelor of Laws by the University of Malaya. The only problem is that for the purpose of s. 4(1A), he wants the period he spent reading in chambers before he was so conferred with the degree to be counted for the purpose

of calculating the twelve months period he is required by the subsection to fulfull. Ordinarily, a person will start his chambering only upon the conferment of the required degree. But in the case of the applicant he started doing so soon after his examination result was announced without waiting to be conferred with the requisite degree.

Section 4(1A), to my mind, is independent of s. 4(1) of the Ordinance as providing another additional qualification for admission as an advocate over and above the requirement of the latter subsection. Section 4(1A) is silent as to when a person should commence to be a pupil or to read in chambers of a practising advocate of requisite experience for purpose of calculating the necessary twelve months period under sub-sebsection (a). Though an independent provision, it is not the intention of the legislature to expect any person at all to commence pupillage or reading in chambers even before he embarks on his legal education or even after embarking on such education, but before he passes the examination in respect of such education. However, once the result of his examination is announced and he is successful in the examination but for the formal conferment of the degree upon him at a convocation ceremony which normally takes place at a later date depending on the convenience of the University authority, in the absence of an express provisions in the Ordinance, I do not think that he should be penalised for having taken the initiative to be a pupil or to read in the chambers of a practising advocate of requisite experience for purpose of acquiring the twelve months period required by s. 4(1A)(a) to support his application for admission as an advocate. In the circumstances, I am of the view that the period spent by the applicant doing his chambering with Mr. Sim Hui Chuang of Messrs. Reddi & Co. Advocate, Kuching from 3 May 1994 to 12 August 1994 should be counted for the purpose of calculating the period of twelve months required by s. 4(1A)(a) of the Ordinance as by that date he had attained his academic qualification in law.

Perusing the various provisions of the Ordinance, I am of the view that the intention of the legislature particularly that of s. 4(1) and (1A) is a person to be admitted to practise law in Sarawak should not only have the necessary academic qualifications by the conferment of the necessary degree upon him but should also have practical experience fitting him to deal with every kind of legal work with which an advocate and solicitor of this Court has the right to deal and with which he holds himself out to the public, by the fact of his admission, as being professionally competent to deal. Looking at the assignments given to the applicant by his master during the period of his chambering as contained in his affidavit in support, I am satisfied that they are of the type of practical work which would prepare him to enable him to deal with every kind of legal work which is required of an advocate and with a further period of chambering making a total of twelve months in all, will make him professionally competent to deal upon being admitted as an advocate. In any event, the type of chambering work he did before the formal conferment of the degree upon him is not at all in issue before me now.

In the circumstance, I would hold that the period spent by the applicant in doing his chambering from 3 May 1994 should be counted for purpose of s. 4(1A)(a) of the Ordinance. In that light, the issue of exemption under s. 4(1B)(a) does not arise.